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Hon. William F. Kuntz, II
U.S. District Judge
United States District Court
225 Cadman Plaza East
Brooklyn, NY 11201

Re: Francisco v. NY Tex Care, Inc., et al.
Case No. 19-CV-04606 (WFK)(PK)

Dear Judge Kuntz:

This office represents the defendants Insun Yun and NY Tex Care, Inc. d/b/a Green & White Dry Cleaners ("Green & White") in the above referenced action. This letter is respectfully submitted pursuant to your Honor's individual motion practices and rules, Sections III (B)(1) and (3), to request a pre-motion conference in anticipation of defendants' filing a motion to dismiss the complaint in its entirety pursuant to Fed. R. Civ. Pro. 12(b)(6) for failure to state a cause of action.

Plaintiff alleges she was employed by Green & White as a dry clean presser from September 2017 to January 7, 2019 (§17)¹ She brought this action on behalf of herself and other employees of Green & White for whom defendants "served/filed knowingly false IRS Form 941 quarterly tax returns... by failing to identify plaintiff and other employees..." on the quarterly tax return forms (§28). Plaintiff alleges defendants failed to deduct withholding taxes from her wages (§18), and failed to report her wages as W-2 income (§22). She alleges she is entitled to damages pursuant to Section 7434 of the Internal Revenue Code, 26 U.S.C. §7434, based on defendants' alleged willful filing of tax information with the Internal Revenue Service ("IRS") which fraudulently failed to include plaintiff's wage information on the return. (§1).

In *Katzman v. Essex Waterfront Owners LLC*, 660 F. 3d 565 (2nd Cir. 2011), the second circuit dismissed a purported class action brought by a tenant against her landlord seeking damages based upon the same statute on account of the landlord's alleged willful failure to file IRS information returns reporting the amount of interest plaintiff had earned on the security deposit she had paid to the landlord. The Court held that the plain language of IRC § 7434 does not apply to an alleged failure to file a required tax return. *Katzman, supra*, 660 F. 3d at 568.

¹ All references are to the numbered paragraphs of the Complaint. (ECF Doc. 1).

AHF/ms